IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3595 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SONABEN NANJIBHAI PATADIA

Versus

STATE OF GUJARAT

Appearance:

Mr.I.S. Supehia, with

MR AS SUPEHIA for the Petitioner.

Mr.Joshi, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/07/2001

ORAL JUDGEMENT

1. Rule. With the consent of parties, the matter is taken up for final hearing today.

2. The petitioner has filed this petition for getting pensionary and gratuity benefits due to her husband and for a prayer for getting family pension.

3. The case of the petitioner is that the husband of the petitioner was working as Rojamdar and Work-charged employee and ultimately, by way of superannuation, he retired on 30.6.1996. Subsequently, he died on 22nd April, 1997. It is the case of the petitioner that her husband had served as a Rojamdar from 1.2.1979 to 12.1.1987 and thereafter, as per the Government Circulars, he was given designation of Work-charged employee from 13.1.1987. He continued to serve as Work-charged employee from 13.1.1987 to 30.6.1996. After his death, the petitioner, who is the widow of the said deceased employee, applied to the Department to give benefit of family pension and to give difference of gratuity amount.

3. It is the say of the petitioner that the said benefit is not given to her, presumably on the ground that her husband's services as Rojamdar was not taken into consideration for computing the said period for the pensionary benefits. It is the say of the petitioner that the services of her husband should have been considered from 1.2.1979 to 12.1.1987, i.e. the period when he was serving as Rojamdar and from 13.1.1987 to 30.6.1996, i.e. the period when he was serving as a work-charged employee. According to the petitioner, the aforesaid periods should be clubbed together and, thereafter, on the basis of the aforesaid service period, pension was required to be fixed and gratuity was also required to be fixed considering the aforesaid entire period.

4. Mr.Joshi, learned AGP, however, argued that so far as the period between 1979 and 1987 is concerned, if there is a break in service and if the petitioner has not completed the period of 240 days in a year, he cannot be given any benefit so far as clubbing that period with the other part of his service period is concerned. He, however, submitted that as per the Government policy, on completion of five years' service, he is required to be absorbed on work charge basis. It is not in dispute that by order dated 12.1.1987, the petitioner's husband was appointed as Work-charged employee, page 19, Annexure `G'. So, even in that case, it can be said that at least, the petitioner's husband was serving as a Rojamdar continuously from 12.1.1982; otherwise, the petitioner's husband would not have been given the appointment order on 12.1.1987. So, in any case, the aforesaid period from

12.1.1982 to 12.1.1987 is required to be computed and required to be clubbed with the remaining part of the services of the petitioner's husband, i.e. the period during which he was serving as a Work-charged employee. Therefore, the petitioner's husband was entitled to have pensionary benefit and for that purpose, the period between 1982 and 1987, i.e. till he was appointed as Work-charged employee, was required to be considered and was required to be clubbed with the period for which he was appointed as a Work-charged employee.

5. Mr.Supehia has relied on the decision of this Court in Special Civil Application No.2836 of 1998. In the said case this Court has already considered the fact that the period for which a person has worked as Rojamdar should be clubbed for the purpose of pension with the subsequent period when the said person has worked on work-charge basis. In the said decision, this Court has held as under :-

> " ... ...
>
> The next question that arises for consideration is whether the period of work put in by the petitioner as a daily wager i.e. from 1979 till 1987 should be taken into consideration for the purpose of pensionary benefits. The petitioner has placed reliance on the Government Resolution dt. 11.10.88. However, except making statement in the affidavit in reply that the Government has made clarification to the effect that "the working as and when required on daily rated basis and period spent during that period cannot be counted for pensionary benefits", the deponent has not produced any other material to substantiate the said statement.
>
> A Division Bench of this Court (Coram : Hon'ble C.J. and J.M. Panchal, J.) in the case of Chhaganbhai Ranchhodbhai Rathod vs. Deputy Executive Engineer & Ors., Letters Patent Appeal No.1495 of 1997 decided on 6.8.98, after considering the resolution dt. 17th October, 1988 in an identical situation has held that the appellant in that case who completed 240 days and was continuously in service for a period of more than ten years as rojamdar is entitled to the benefits of pension.

Mrs. Sidhdhi Talati, learned A.G.P. instructed by Mr.Hasurkar, learned Government Solicitor has, however, invited my attention to Rule 230 of the Bombay Civil Services Rules and submitted that since the petitioner was not holding substantive permanent post before 1987, he is not entitled to pensionary benefits. In her submission the services of rojamdar are not required to be taken into consideration for the purposes of counting the period of service for pensionary and other benefits. In view of the decision of the Division Bench of this Court in Chaganbhai Ranchhodbhai's case (supra), it is not possible to accept the submission of Mrs. Talati. In Tribhovanbhai Jerambhai Vs. Deputy Executive Engineer, Sub-Division, R & B Department and another, 1998(2) G.L.H. 1, this Court, after considering Rule 230 of the B.C.S.R. has ruled that Rule 248 of the B.C.S.R. provides that Government may, by general or special order, permit service other than pensionable service for performing which a Government servant is paid from State revenue or from local fund to be treated as a duty counting for pension. In issuing such order the Government is to specify the method at which the amount of duty shall be calculated and may impose any condition which it thinks fit. Thus Government has necessary power to provide for pension even in cases where service other than pensionable service may become eligible for grant of pension. It is further ruled that in the resolution dt. 17.10.88, it has been envisaged that those workmen who, as on 1.10.88 or therafter completes ten years of continuous service to be counted in accordance with provisions of section 25-B of the I.D. Act shall be deemed to be permanent. Under the resolution dt. 17.10.88 his entire continuous service from the date of entry until he retires including his services rendered prior to the date of his regularisation is taken into consideration for the purpose of computing pension or making pension available to such retired employee. In

> view of this, it is clear beyond any manner of doubt that the services of the petitioner as a daily rated employee, if not from the year 1960, at least from the year 1979, is required to be taken into consideration until he retired for the purposes of computing pensionary benefits.
>
> ... ..."

4. In view of the aforesaid judgment, the period between 12.1.1982 and 12.1.1987, during which the husband of the petitioner was serving as Rojamdar, is also required to be considered for the purpose of fixing pensionary benefits. However, in view of what is stated above, last five years' services preceding the appointment of the petitioner's husband as a Work-charged employee is required to be paid as there is no dispute that after completing five years' service as a Rojamdar, he was appointed as a Work-charged employee. Therefore, while calculating the pension, the services put in by the petitioner's husband from 12.1.1982 to 12.1.1987 and thereafter, from 1987 till he superannuated, is required to be taken into consideration and for that purpose, the Department is directed to fix the pension of the petitioner's husband and Department is also directed to give the benefit of family pension to the petitioner on that line. Decision in this connection may be taken within a period of two months from today and whatever amount is required to be paid on that basis, the same may be paid within a period of one month therafter. If there is a delay in making such payment, the petitioner will be entitled to interest at the rate of 12% per annum for the entire amount in question. The petitioner will be entitled to the difference in gratuity, if any, on the basis of the aforeaid period which is required to be taken into consideration and, therefore, the difference in the gratuity amount which is required to be paid also will be paid within a period of three months. Rule is made absolute to the aforesaid extent with no order as to costs.

12th July, 2001 (P.B. Majmudar, J.)

****

(apj)